

REMARKS

Applicants have carefully considered the matters raised by the Examiner in the outstanding Office Action but remain of the position that patentable subject matter is present. Applicants respectfully request reconsideration of the Examiner's position based on the amendments to the specification and the following remarks.

The present invention includes a method and apparatus for providing multiple discounts to a consumer. In one of the novel aspects of the invention, a vehicle for multiple discounts is issued directly from a supplier to a high-volume consumer that has been recognized using previously collected statistical data.

The direct issuance of the discount vehicle has many benefits. For example, a supplier can selectively target high volume consumers in order to provide increased incentives to attract future purchases (page 3, lines 16-28). The supplier can therefore directly generate maximum purchase frequency and good will with preferred consumers (page 5, lines 2-15). Thus, product suppliers have a means

to convey discounts directly to consumers, thereby eliminating the need to convey discounts through newspapers or the like, and increasing the likelihood of consistent consumer purchasing.

Claims 1-10 and 13-19 had been rejected as being unpatentable over Fajkowski. Claims 1-12 and 14-25 had been rejected as being anticipated by Valencia. Claims 20-25 had been rejected as being anticipated by Fajkowski. Claims 16-19 and 20-25 had been rejected as being directed to non-statutory subject matter. Claims 4, 14 and 21 had been rejected as being indefinite. Finally, the title of the invention had been rejected.

Fajkowski and Valencia do not teach that the supplier issues the discount vehicle as recited in claims 1, 16 and 20.

Fajkowski teaches a method for the electronic redemption of coupons. An electronic coupon card scans the coupon bar codes found in newspaper inserts thereby eliminating the necessity for the manual cutting of coupons (page 5, lines 7-10). The Examiner has recognized that

Fajkowski does not teach that the supplier directly issues the coupons to the customer (page 8, paragraph 1 of Office Action).

Valenica teaches a smart card that is inserted into a terminal at a retail checkout counter. The terminal is programmed with the sale items and discounts the purchased items accordingly (Abstract). Valencia teaches that the smart card is purchased from a stand-alone or retail customer service center or the retail cashier (col. 6, lines 51-59).

Fajkowski and Valencia therefore do not teach that the supplier provides the discount vehicle directly to the consumer. The Examiner, however, has taken Official Notice of this aspect of the present invention. Applicants submit that the taking of Official Notice is not proper under the circumstances.

MPEP § 2144.03 sets forth the situations when it is proper to take Official Notice. Official Notice is proper when the facts beyond the record are "capable of such instant and unquestionable demonstration as to defy

dispute" (MPEP § 2144.03(A)), citing *In re Knapp Monarch Co.*, 296 F.2d 230). Furthermore, Official Notice is never appropriate to "rely solely on common knowledge in the art without evidentiary support in the record, as the principal evidence upon which a rejection is based" (MPEP § 2144.03(A), citing *In re Zurko*, 258 F.3d 1379, 1385).

Applicants submit that it is improper for the Examiner to take Official Notice of providing a discount vehicle from a supplier to a consumer. This teaching is at the heart of Applicants' invention. The Examiner cannot take Official Notice as the principal basis for this rejection. Applicants respectfully submit that, based on the record, Applicants' invention is patentable over the cited references.

Claims 16-19 and 20-25 had been rejected as being directed to non-statutory subject matter. The Examiner had stated that claims 16 and 20 fail to recite the necessary hardware capable of reading the data encoded in the value card and the coupon kit.

Applicants respectfully submit that a positive recitation of the reading hardware is not necessary. Claims 16 and 20 are respectively directed to the value card itself and the coupon kit itself. Applicants do not intend to claim the reading hardware as part of the invention. Thus, Applicants do not wish to positively recite the reading hardware.

Claims 4, 14 and 21 had been rejected as being indefinite. In regard to claims 4 and 21, the Examiner had stated that all coupons inherently have time limitations. Applicants respectfully disagree. While it is true that most coupons have an expiration date, there is no reason why coupons cannot be valid for an indefinite period of time. Applicants have claimed the latter type of coupons.

In regard to claim 14, the Examiner had stated that the value card must first be issued to the customer before transaction data is compiled. Applicants again respectfully disagree. It is conventional and well known in the art to collect commercially available statistical

data relating to product sales. Claim 14 recites that the value cards are supplied to select consumers based on this previously collected statistical data.

Finally, the title of the invention had been rejected. Applicants have amended the title of the invention to read "METHOD AND APPARATUS FOR CONSUMER PURCHASE DISCOUNTS". It is submitted that this title is descriptive of the invention.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance and such action is respectfully requested. Should any extensions of time or fees be necessary in order to maintain this Application in pending condition, appropriate requests are

hereby made and authorization is given to debit Account #
02-2275.

Respectfully submitted,

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